CHARTER AMENDING POWERS OF CITIES UNDER MICHIGAN HOME-RULE LEGISLATION.

THE recent development in Michigan of the idea of home-rule for cities and villages makes the relation of municipal to state government there a matter of particular interest at the present time. The constitution of 1908 provided that the legislature should pass general laws giving to cities and villages the power to construct their own charters.[1] The next two assemblies both attempted to frame statutes in accord with this general provision,[2] but the decisions of the Supreme Court in a number of important cases showed that these acts failed of their purpose. Having found that under the constitution as it existed no act could be passed which would provide for all existing cases, the legislature proposed a constitutional amendment, which was adopted in 1912. Under this amendment fresh legislation was passed in 1913,[3] reënacting many portions of the measures before declared unconstitutional. This act has not yet been brought into question in any important case and has therefore not been interpreted by the Supreme Court.[4]

Prior to the adoption of the new constitution in 1908, every city charter was the result of express legislative provision. The charters of all fourth class cities were identical, the form being provided by an act of the legislature in 1895,[5] but each of the larger cities had its own special charter, passed in its entirety by the legislature. The fact that all charters prior to 1908 were the result of definite legislative act has given rise to the most important question in regard to each of the home-rule measures passed since the present constitution went into effect. Stated in its simplest form, the question is: Under the act, what power has a city to amend a charter which the state legislature granted to it, prior to 1909, by special act? This problem was considered by the Supreme Court in connection with the acts of 1909 and 1911. It has not received judicial consideration since the constitutional amendment of 1912 and the passage of the HOME-RULE ACT of 1913, better known as the VERDIER ACT. This problem, as to the power of a city to amend a special charter act, cannot be properly understood and appreciated

[1] Const. 1908, Art. VIII, § § 20, 21.

[2] Acts 279, Pub. Acts 1909 and 203, Pub. Acts 1911.

[3] Act No. 5, Pub. Acts 1913, known as the Verdier Act.

[4] Attorney General, ex rel. Barbour v. Lindsay, 178 Mich. 524, involves this act, but only the "immediate effect" clause, which makes it of no interest in this discussion.

[5] Act No. 215, Pub. Acts 1895.

unless something is known of the relations existing between the state and municipalities prior to 1909. A brief sketch of those relations, up to that date, will show how the present question has arisen and how the idea of home-rule for cities and villages, which has so much to do with the precipitation of that question, has developed in Michigan.

These two problems therefore present themselves: first, to trace the development of the idea of home-rule in Michigan and to determine what is now considered the source of the city's power,—to ascertain whether that power is inherent or granted by the legislature; second, to find out, if possible, whether or not a city chartered by special legislative act prior to 1909 may amend that charter without including in it certain compulsory provisions laid down in the present legislation for the incorporation of cities.[6] These questions are so closely related that they cannot be taken up separately but must be considered together, facts regarding one often contributing to a clearer understanding of the other.

The relation between city and state governments in Michigan prior to 1896 has already been well treated by Dr. D. F. WILCOX, who considers not only constitutional developments but the influence of judicial interpretation as well.[7] A very brief review of his work will perhaps furnish the most satisfactory treatment of the period before 1896. From that date until the adoption of the constitution of 1908 there was an increasing tendency toward home-rule for cities, somewhat hampered by the old constitution. The new constitution provided specifically for home-rule legislation, the formulation of which has resulted in the questions which have been seen to exist.

A study of the three adopted, and two rejected, constitutions of Michigan will assist in tracing the development of city and state relations. The first constitution, that of 1835, under which statehood was acquired in 1837, made only a short general provision regarding incorporation and said nothing about city incorporation in particular.[8] More attention was paid to the cities by the convention of 1850. While the prohibition of special legislation does not seem to have been considered,[9] the general attitude of the state is shown by a number of provisions, among them the following:

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[6] Act No. 5, Pub. Acts 1913. This is simply a modified form of Act No. 279, Pub. Acts 1909, the original home-rule bill.

[7] Dr. D. F. Wilcox: Municipal Government in Michigan and Ohio. Columbia University Studies.

[8] Const. 1835, Art. XII, § 2.

[9] Wilcox, op. cit. 25.

(1) The legislature may confer upon organized townships, incorporated cities and villages, and upon the board of supervisors of the several counties, such powers of a local, legislative and administrative character as they may deem proper.[10]

(2) The legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts and loaning their credit.[11]

(3) Judicial officers of cities and villages shall be elected and all other officers elected or appointed at such time and in such manner as the legislature may direct.[12]

(4) Private property shall not be taken for public improvement in cities and villages without the consent of the owner, unless the compensation therefor shall first be determined by a jury of freeholders and actually paid or secured in the manner provided by law.[13]

All the clauses here quoted, and a number of others which bear less directly on cities, show clearly the original idea of the source of the city's powers. It was regarded simply as a governmental agent, while the state legislature was made the real seat of power. "The legislature *may confer* * * * *such powers* of a local, legislative and administrative character *as they may deem proper.*" Only the judiciary was required to be elective. All other city officers were left completely under the control of the legislature as to time and method of choice.

Neither of the complete constitutional revisions of 1867 and 1873 was adopted. The debates in 1867 indicate the growth of the city problem. A resolution suggesting the passage of general laws for the incorporation of municipalities, not subject to amendments of a purely local character, was followed by the proposition, "That there be added to the section authorizing the grant of power to local bodies, copied from the constitution of 1850,[14] the words, 'The legislature shall provide by general laws for organizing townships, cities and villages, on such conditions and subject to such regulations as may be prescribed. No special acts to create any such organization or defining their powers, except cities containing over 10,000 inhabitants, shall hereafter be passed by the legislature.' "[15]

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[10] Const. 1850, Art. IV, § 38.
[11] Ibid. Art. XV, § 13.
[12] Ibid. Art. XV, § 14.
[13] Ibid. Art. XV, § 15.
[14] Const. 1850, Art. IV, § 38; note 10 supra.
[15] Convention Debates, 1867. II, 95.

The first part of this proposition passed, but the second was defeated.

A few delegates appreciated the fact that this provision would really be a great limitation on the legislature.[16] The member who introduced the resolution referred to hoped for a general plan of city organization, to be filled in as to details by the local units themselves. There existed at the time, therefore, some idea of fundamental rights resting in the lower unit rather than granted from above.

A square clash between the old view and the home-rule idea came in the debate over the selection of local officers.[17] It resulted in victory for the old view, though the other side made a strong fight. At this time, however, there was almost no idea of local charter formulation; the fight was for dependable constitutional, in place of undependable legislative, grants; and there was an absolute failure on both sides to recognize the double functions of a city, as a district for state administration as well as a complete unit for its own business.

The 1873 revision was prepared by a committee appointed by the governor but was amended somewhat by the legislature. It prohibited special legislation for municipalities, provided for general limitations in financial matters,[18] and gave the legislature considerable power in regard to the selection of local officers.[19] The last point was greatly modified by the amendments made by the legislature.[20] While not adopted, this revision and that of 1867 show an increasing demand for constitutional protection for cities, as well as certain limitations, especially as to finances.[21] At times there is a hint of the more recent conception of home-rule. In spite of all this, the constitution of 1850 remained in force till 1908, but its interpretation by the Supreme Court through half a century brought about a great development in the matter of municipal powers.

A legislative act of 1853, appointing the members of a Water Commission for Detroit, but leaving their successors to be chosen by the city council, was never tested in the courts. Twelve years later a Police Board was established, but in this case the successors to the original appointees were to be selected by the governor with the advice of the senate. In *People* v. *Mahaney*[22] this law was

[16] Mr. Stoughton, Conv. Debates, 1867. II, 96.
[17] Ibid, II, 333, Mr. Lothrop; II, 339, Mr. Conger.
[18] Proposed Const. 1873, Art. X, § 14.
[19] Ibid. Art. X, § 16.
[20] Same, as amended by the legislature.
[21] Wilcox, op. cit. 34.
[22] 13 Mich. 481, (1877).

upheld, and while the question involved was not the central appointment of local officers, the court's action caused the activity of the Detroit home-rulers in the 1867 convention.

After this, various administrative boards for Detroit were appointed, the successors to the original appointees to be named by the city council. But in 1871 the appointment of a Park Board and a Board of Public Works resulted in the famous case of *People* v. *Hurlbut*.[23] Each judge rendered a separate opinion, but all agreed that permanent appointment could be made only by the local authorities. Judge COOLEY's opinion proclaimed the theory of an unwritten constitution in Michigan, for while he admitted the right of the legislature to make or destroy a city and enlarge or diminish its powers, "Whatever powers a municipality might be given, its right to exercise them through its own officers was guaranteed by a law higher than the written document adopted in 1850."[24]

The case of *Attorney General* v. *Lathrop*[25] held that local acquiescence is equivalent to confirmation of acts by the legislature and that the Detroit Park Commission had been in effect confirmed by the Common Council when it accepted the commission's plan. But when the legislature extended the powers of this commission and ordered the council to furnish it certain funds, Judge COOLEY held, in *Board of Park Commissioners* v. *Common Council of Detroit*,[26] that the legislature cannot compel a municipal body to contract debts for local purposes against its will. He also clearly distinguished between matters of general concern enforced upon localities and things of purely local interest in which the legislature attempted to interfere, the distinction which the convention of 1867 failed to recognize.[27]

Again in 1873, while holding constitutional the main features of an act establishing a Board of Public Works for Detroit, Judge COOLEY declared that he could not find any safe constitutional ground for the support of "the new idea of parcelling out the powers of a municipal government among small boards, however chosen."[28] This was entirely consistent with his idea of an "unwritten constitution," for he looked upon the establishment of these boards by the legislature as an usurpation of power by that body, rather

[23] 24 Mich. 44, (1871).

[24] Wilcox, op. cit., summarizing Judge Cooley's opinion.

[25] 24 Mich. 235, (1872). Another case of the same nature is Hubbard v. Town Board of Springwells, 25 Mich. 153, (1872).

[26] 28 Mich. 228, (1873).

[27] Notes 16 and 17, supra.

[28] Attorney General v. Common Council of Detroit, 29 Mich. 108, (1873).

than as a right belonging to it which might be gradually encroached on by the cities.

Later, in *Allor* v. *Wayne County Auditors,*[29] Judge CAMPBELL said, "It is not and certainly cannot be claimed that under our constitution there can be any such thing as municipal government which is not managed by popular representatives and agencies deriving their authority from the inhabitants. No business which is in its nature municipal can be controlled by the state or by any other outside authorities." And in *Torrent* v. *Muskegon,*[30] it was held that constitutional financial provisions are general only and the city must be allowed to exercise its discretion within the general limits fixed.

Attorney General v. *Board of Councilmen of the City of Detroit*[31] arose from an attempt by the legislature in 1885 to establish a bipartisan Election Board for Detroit. In this case the court said, "When an election ceases to be a municipal procedure the whole foundation of municipal government drops out. And a municipality not managed by its own officers is not such a one as our constitution recognizes."

This was the last of this important group of cases, for *Schneider* v. *Blades,*[32] decided ten years later, added nothing to what had already been developed. Local self-government was becoming more than mere theory in Michigan. While the legislature controlled the corporate powers of cities, it could not take away from the people of any locality the fundamental right of managing their own affairs. If further grants of power were made to cities they could be exercised only by the local officers.[33] A great change had come about since 1835. Greater freedom was allowed to the city in the exercise of its powers. But the idea that all such powers must originally be granted by the state legislature had not been discarded. This much only had been developed: that the determination of the mode of exercise of the powers, though not the powers themselves, rests inherently in the people of the local unit, which is, in this case, the city.

This change since the adoption of Michigan's first constitution in 1835 was continued by judicial decisions handed down after 1908. In the case of *Gallup* v. *City of Saginaw,*[34] Justice STEERE does not speak of enumerated powers, "nor of powers which the legis-

[29] 43 Mich. 76, (1880).
[30] 47 Mich. 117, (1881).
[31] 58 Mich. 213, (1883).
[32] 108 Mich. 3, (1895).
[33] Wilcox, op. cit., summarizing the general content of these decisions.
[34] 170 Mich. 195, (1912).

lature may confer," but says, "The new system is one of general grant of rights and powers, subject only to certain enumerated restrictions instead of the former method of granting enumerated rights and powers definitely specified." The position of the legislature has changed from "granting powers" to "placing limitations." That of the city has changed correspondingly, and instead of enjoying only those rights specifically granted it is permitted all those which are not specifically denied. This is the present idea of the source of the city's powers.

Little of interest occurred during the period from 1896 to the Constitutional Convention of 1907 and 1908. In 1895 the legislature passed an act[35] for the incorporation of fourth class cities which laid down the details of government very minutely. The larger cities still had their special charters. Every session of the legislature saw the passage of a large number of amendments to such charters. The local acts of each session regularly filled a volume of some nine or ten hundred pages, containing mostly charter revisions or amendments and special acts for cities, villages and other local governmental units. Such provisions practically always originated in the local unit itself, but had to go through the form of grant by the legislature.

The action taken by the Constitutional Convention showed that its members appreciated this state of affairs. In the words of the Committee of Address to the People,[36] "The provisions * * * [in the new constitution] * * * are designed to meet the modern condition of municipal affairs; to authorize through appropriate legislation that which has heretofore been denominated 'Home-Rule.'" This was the result of the growth since 1850. The trend of public opinion, indicated by the judicial decisions which have been cited, had been toward the idea of complete local government rather than government operating on a foundation of grant from the central power. This progress had continued after the handing down of the important decisions which have been quoted. As the Address to the People stated, things had come to the place where home-rule was actually a fact, though not authorized by the Constitution. The letter of that document had not been changed, but the sense had been decidedly altered by judicial interpretation, and the practice of cities recognized and conformed to the changed construction. The present constitution recognizes positively the existence of the idea of home-rule, and its adoption marks the beginning

[35] Act No. 215, Pub. Acts, 1895.

[36] This committee prepared a pamphlet explaining the new constitution to the people and urging its advantages, as conceived by the convention.

of by far the most interesting period in the study of municipal and state relations.

The convention which drafted the present constitution met in November, 1907, and was in almost continuous session until its adjournment on March 3rd of the following year. Immediately upon its organization proposals began to be introduced and these were referred to the proper committees, where they were taken up and discussed and finally worked into definite sections for submission to the committee of the whole. Unfortunately, reports of the committee discussions are not available and it is impossible to ascertain the ideas of, and the attitude toward, home-rule shown by the Committee on Cities and Villages. To some extent, however, the ideas of that committee can be gained from the reports of their defense of the sections which they finally submitted to the convention.

In the first place, what was the general character of the proposals regarding city government which were placed before the convention and referred to the Committee on Cities and Villages? Without exception, general laws for incorporation were favored.[37] Several proposals contained the idea of classifying cities as to size and requiring the legislature to pass a general form of charter for each class.[38] Limitation of the right of taxation and of contracting debts was also suggested.[39] All of these proposals were united by the committee into the following clause, which was passed without discussion and subjected only to slight amendment as to phraseology. "The legislature shall provide by a general law for the incorporation of cities and by a general law for the incorporation of villages; it shall limit their rate of taxation for municipal purposes and restrain their power of borrowing money and contracting debts."

Many proposals for home-rule were made, but the one which seems most concise and expressive of the idea was that of Mr. H. M. CAMPBELL, providing, "That all powers of local government pertaining to cities and villages, subject to the constitution and general laws, shall be vested in the people thereof."[40] Many proposals were made concerning municipal ownership of public-service utilities, and a number of suggestions were made as to the various administration details connected with home-rule. At least two proposed sections provided home-rule for cities of more than ten thousand inhabitants. One of these seemed to constitute the most extreme expression of local autonomy made in the convention, when

[37] Journals of the Constitutional Convention. I, 93, 103, 141, 284, 557.
[38] Ibid.
[39] Ibid. I, 557.
[40] Ibid. I, 222.

it stipulated that the legislature should not enact any law restricting within its own territory its own control by any city. The legislative body and legal voters of such cities, in the manner determined by the local legislature, might enact and amend its charter, subject of course to the constitution, criminal and all other general laws.[41] Though the more extreme attitude shown in the first part of this proposal was somewhat toned down by the last few words, it still was a fuller view of local autonomy than that which finally did find expression in the constitution.

All of these proposals and many more of the same general nature, were taken up by the Committee on Cities and Villages, and formed the basis of a number of sections presented to the convention. The first of these, it has been seen, was accepted with practically no discussion. Hardly another section passed as easily as this. Yet the general principle of home-rule suffered little attack and most of the sections were finally passed in practically the same form in which they were reported from the committee. In all, about seven sections deal specifically with the city, defining and limiting its powers. Of these the first two are of the greatest interest:

> (1) The legislature shall provide by a general law for the incorporation of cities and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes and restrict their powers of borrowing money and contracting debts.[42]
>
> (2) Under such general laws the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of the state.[43]

Regarding this portion of the constitution the Address to the People said: "The provisions herein contained are designed to meet the modern conditions affecting municipal affairs; to authorize through appropriate legislation that which has heretofore been denominated 'Home Rule.' * * * The purpose (of these provisions) is to invest the legislature with power to enact into law such broad general principles relative to organization and administration as are or may be common to all cities and all villages, each city being left to frame, adopt and amend those charter provisions which

[41] Ibid. I, 50.

[42] Const. 1908, Art. VIII, § 20.

[43] Ibid. Art. VIII, § 21.

have reference to their local concerns. The most prominent reasons offered for this change are that each municipality is the best judge of its local needs and the best able to provide for its local necessities; that inasmuch as special charters and their amendments are now of local origin, the state legislature will become much more efficient and its terms much shorter if the labor of passing upon the great mass of detail incident to municipal affairs is taken from that body and given into the hands of the people primarily interested."

"Under these provisions, cities and villages, as under the present constitution, will remain subject to the constitution and general laws of the state."

"The right conferred to establish certain essential institutions involving public health and safety and to acquire the public utilities named, is conceived to be in line with the general privileges of home rule and one placing within the hands of municipalities, *under the restrictions named,*[43a] certain powers for potential competition with such corporations as from the very nature of the service required of them are monopolies."

The constitution as finally submitted to the people by the convention was passed by the electors in the fall of 1908 by a large vote. In accordance with its provisions, the legislature in 1909 passed two acts,[44] one providing for the incorporation of cities and the other for villages. These two acts were of very much the same nature and involved exactly the same principle. The one regarding cities was entitled, "An act to provide for the incorporation of cities and for changing their boundaries." Its more general provisions were:

Sec. 1. "Each organized city shall be a body corporate."

Sec. 2. "Each city now existing shall continue with all its present rights and powers until otherwise provided by law."[45]

Sec. 3. Certain things which "Each city charter shall provide."

Sec. 4. Permissive charter provisions.

Sec. 5. Those things which no city shall have power to do.

One important part of section four, which contained permissive charter provisions, was paragraph (t):

[43a] The italics are mine.

[44] Acts 278 (Villages) and 279 (Cities), Pub. Acts, 1909.

[45] The use of the word "until" caused some doubt as to whether the provisions of this section included this act itself. The amendment made in 1911, by Act 203, Pub. Acts 1911, remedied this by substituting for "until otherwise provided by law" the words "except as herein otherwise provided," thus removing all ambiguity.

> "Each city may in its charter provide for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, *whether such powers be expressly enumerated or not;*[45a] for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns, *subject to the constitution and general laws of this state.*"[45a]

Provisions were also made for cities desiring to revise their charters[46] and for the amendment of charters.[47] New charters, revisions and amendments must all be submitted to the governor before being put before the people, and if disapproved by him must receive a two-thirds vote of the commission or legislative body, as the case might be, before being submitted to a popular vote.

The first case which involved this act was *Common Council of the City of Jackson* v. *Harrington.*[48] The Jackson common council sought a writ of mandamus to compel Joel HARRINGTON, city recorder, to give notice of a resolution calling for a general revision of the city's charter. The writ was granted, and Justice BROOKE, in giving the opinion, laid down two points which are of interest. In the first place, the legislative intent of this act was to provide for the incorporation of all cities, not omitting those which have charters, and to give to the electors the power to frame, adopt and amend charters. Secondly, the title of the act is sufficiently broad to include revision of existing charters, since the act of incorporation includes the adoption of a charter. This decision agreed substantially with the views of the framers of the constitution as to what an act of this kind should do, as expressed in their debates.[49]

The *Jackson* case arose over what was merely an attempt at complete revision. But several cities, among them Detroit, Ann Arbor and Flint, proceeded to amend their charters piecemeal, without a general revision.[50] Apparently no effort was made to include in these revisions the compulsory provisions of section three of the HOME-RULE ACT which were not desired by the cities. Difficulties arose in Detroit and the case of *Attorney General ex rel.*

[45a] The italics are mine.

[46] Const. 1908. § 18, 19, 20.

[47] Ibid. § 21.

[48] 160 Mich. 550, (1910).

[49] Convention Debates, II, 808 ff.

[50] Crossman: Commission Government in Michigan, P. 3.

Hudson v. *Common Council of the City of Detroit*[51] went to the Supreme Court. Several points were considered, but the most important in connection with this discussion was the decision that the requirements of sections three and five of Act 279, Public Acts of 1909, should be conformed to in *any* amendment *or* revision of existing charters.

Briefly, the reasoning of the court in the case was this: general charter revision is provided for, with a commission of the same nature as for newly incorporated cities, and it cannot be doubted "that it was the intention of the legislature to require that such revised charter should also contain the compulsory and restrictive provisions referred to." Now, does a different rule apply to amendments? If we answer, "Yes," the result will be that cities by extensive amendments may effect as general revision of the charter, containing none of the restrictive provisions of section five, or perhaps prohibiting the doing of any of the things commanded by section three.

Continuing, the court held that the provisions of section twenty-two, regarding amendments, referred to a new charter or a general revision equivalent thereto, framed and adopted under the provisions of this act. "This is in harmony with the letter and spirit of the constitution, to provide municipal government for all cities in conformity with the fundamental principles of which, and the constitution and general laws of the state, each city may govern itself according to the judgment of its electorate. The contrary construction of piecemeal amendment would be out of harmony with the scheme of home-rule proposed by the constitution and the statute and would make the confusion intended to be remedied by 'general laws' worse confounded." In conclusion, it was again stated that, "revision must precede amendment," and therefore, "the proceedings have not been taken in accordance with the act." The act itself was declared constitutional, piecemeal amendment alone being thrown out. Such a decision would of course put an end to any amendment of previously existing charters, unless all provisions of sections three and five of the HOME-RULE ACT were carried out.

The legislature was in session at this time, and before adjournment it passed an act amending the HOME-RULE ACT of 1909.[52] Besides clearing up some ambiguities which had been disclosed in the earlier act by the case of *Jackson* v. *Harrington*,[53] this statute provided specifically for piecemeal revision by these words in sec-

[51] 164 Mich. 369, 129 N. W. 879, (1911).
[52] Act No. 203, Pub. Acts 1911.
[53] See p. 291, note 48, supra.

tion twenty-one: "Any existing charter, *whether passed pursuant to the provisions of this act or by the state legislature,*[53a] may from time to time be amended * * *" By section thirty-seven this provision was made retroactive, validating previous revisions of this kind: "All charters heretofore formulated and all proceedings of charter commissions heretofore had under this act are hereby validated and made effectual, in so far as the same shall conform to and be within the provisions of this act as amended." But even this does not seem to make any provision for piecemeal amendment without regarding the demands made in sections three and five.

Under this act Detroit again proceeded to make amendments to its charter. One of these related to civil service reform. The council failed to submit this amendment to the people at the next election after its passage by the council, and mandamus proceedings were brought to compel such submission. This was the case of *Attorney General ex rel. Vernor* v. *Common Council of the City of Detroit.*[54] The court decided three points, the first of which was the original question regarding the submission to the electors. In the second place it repeated the decisions of the earlier cases,[55] that it was the intent of the legislature that the electors of the city should determine the local laws regarding municipal affairs. Finally, it was held that section twenty-one of the HOME-RULE ACT of 1911, authorizing cities to amend their charters without revising them under the constitution and the statutes passed pursuant thereto, was invalid.

The amendment of specific sections, it was held, should conform to the general law just as a new charter or a general revision of an old charter should. If this were not so, mere amendment of certain sections might leave the charter repugnant to the general laws and instead of being subject to uniform restrictions upon all cities a city might be subject only to such limitations as it chose to accept and might adopt such provisions as it deemed beneficial. Such a construction would be in contravention of the constitutional provisions as interpreted in *Attorney General ex rel. Hudson* v. *Detroit Common Council,*[56] and therefore the section authorizing the amendment of any existing charter was declared unconstitutional and void.

This section of the act having been thrown out by the court, the

[53a] The italics are mine.

[54] 168 Mich. 249, (1912).

[55] Jackson v. Harrington, 160, Mich. 550, (1910); Attorney General, ex rel. Hudson v. Common Council of Detroit, 164 Mich. 369, (1911).

[56] See p. 292, note 51, supra.

whole act was soon after declared unconstitutional by the decision in the case of *Gallup* v. *City of Saginaw*.[57] The purpose of the act, the court held, as shown clearly in the case of *Attorney General ex rel. Vernor* v. *Detroit Common Council,* was to authorize piecemeal amendment of city charters. That same decision had declared unconstitutional the portion of the act which authorized amendment of existing charters in advance of general revision. Therefore, the Supreme Court supported the position that had already been taken by the Circuit Court, that, "The real purpose for which it was passed having failed, the entire act must fail with it."

It is hard to conceive of a more uncertain state of affairs than that which existed after these decisions had been handed down. All attempted provisions for piecemeal amendment had been held unconstitutional. Since the HOME-RULE ACT of 1911 was merely an amendment of the original HOME-RULE ACT of 1909, the original statute, with the decisions thereupon, again constituted the law regarding incorporation of cities. But the intent of that act was, "That existing rights and powers should obtain until the municipalities themselves elected to change them *by methods prescribed, in the act,* thus, for that purpose, in harmony with the spirit of home-rule * * *."[58]

The position developed in the cases of *Jackson* v. *Harrington*[59] and *Attorney General ex rel. Hudson* v. *Detroit*[60] was that under the HOME-RULE ACT of 1909 charters hitherto granted by state statute could not be amended; that complete general revision, resulting in a new charter, must take place before any amendment could be made, the amendment then being made to the new charter; that such a new charter must of course conform to the compulsory provisions of, and contain none of the things prohibited by, the HOME-RULE ACT.

The amendments to this original act accomplished by the new statute passed in 1911,[61] attempted to make possible the amendment of such charters without general revision, but this law was declared unconstitutional, first in part and then *in toto.* Evidently the only solution was a constitutional amendment, and to effect this Governor OSBORN called a special session of the legislature in 1912. The final decision of the Supreme Court on *Gallup* v. *Saginaw* was not handed down till May 4th, while this extra session adjourned in April, but

[57] 170 Mich. 195, (1912).

[58] Ib. at p. 204; the italics are mine.

[59] 160 Mich. 550, (1910).

[60] 164 Mich. 369, (1911).

[61] Act No. 203, Pub. Acts 1911.

the decision of the Circuit Court earlier in the year had made it practically certain that Act 203, Public Acts 1911, would be declared unconstitutional, as it was.

The amendment to the constitution proposed by this special session changed section twenty-one of article eight to read as follows, the new portion being italicized.

> Under such general laws the electors of each city and village shall have power and authority to frame, adopt and amend its charter, *and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village,* and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of the state.

This amendment was submitted to and passed by the people of the state in the fall election of 1912.

The next spring the so-called VERDIER ACT[62] was passed, approved, and given immediate effect. It had Act 279, Public Acts of 1909, as its basis, specifically re-enacting most of the provisions of that act, but making a few changes. The title was again changed, this time to, "An act to provide for the incorporation of cities and for revising and amending their charters." Section twenty-one provided for the amendment of charters granted previous to the passage of the first home-rule measure: "Any existing charter, whether passed pursuant to the provisions of this act or heretofore granted or passed by the state legislature for the government of a city, may from time to time be amended in the following manner." Other sections indicate the same purpose as that expressed here. Finally, in section thirty-eight, the intent of the act is definitely stated, that "Cities under existing charters heretofore granted by the legislature shall have the same right and power to amend such charters under the act hereby amended as cities that have adopted complete charter revisions."

These provisions make perfectly clear the right of a city to amend a charter granted to it previous to the HOME-RULE ACT of 1909, in accordance with that act as revised in 1913. In other words, it gives such cities the right to amend the legislative acts which constitute their charters, just as other cities may amend charters constructed by themselves under home-rule legislation. But the question still remains:—What attention must be paid by such cities to the compulsory provisions of section three and the negations of privilege

[62] Act No. 5, Pub. Acts 1913.

contained in section five? Must the city make its charter conform to all these provisions the first time it amends its old specially granted charter? Or must it even, perhaps, include them at once by amendment, whether any other amendments are made or not?

These questions have not yet been presented to the Supreme Court for consideration. The only case involving the VERDIER ACT which has reached that court was *Attorney General ex rel. Barbour* v. *Lindsay*,[63] which considered only the operation of the "immediate effect" clause and therefore throws no light on the points under consideration here.

As a matter of fact, cities have treated the act as if it permitted amendment without the consideration of these compulsory provisions. The very reason for the passage of the bill with the "immediate effect" clause was that representatives of various cities, such as Detroit and Grand Rapids, attended the hearings on the bill and urged that it be given immediate effect in order to permit them to put their amendments before the people at the April elections. Yet none of these cities, at that or any later time, presented amendments to reconcile their charters completely with the requirements of the general act.

The final determination of this question is still a matter of conjecture. It has not been decided in the courts. However, it is difficult to see on what grounds cities may be exempt from including the compulsory provisions in their amended charters. The amendment of 1912 and the subsequent legislation do not seem to grant any such exemption. In the first place the purpose of that constitutional amendment was simply to enable cities to amend the state legislative acts which constituted their charters. The amendment in no way excuses the city from including the compulsory provisions in such a charter amendment. On the other hand the amended section of the constitution still contains the concluding words, "Subject to the constitution and general laws of the state."

Certainly the VERDIER ACT comes under the head of general legislation. And that act in no way exempts cities from including its compulsory provisions in their charters. Furthermore, the VERDIER ACT is practically identical with the HOME-RULE ACT of 1911, which was passed upon by the Supreme Court in two important cases.[64] The court then said that the intent of the act was to permit piecemeal amendment without general revision, which it considered unconstitutional but which was later made constitutional by the amendment of 1912. But the court never held that the act was

[63] 178 Mich. 524, (1914).

[64] Attorney General ex rel. Vernor v. Common Council, 168 Mich. 249, (1912), and Gallup v. Saginaw, 170 Mich. 195, (1912).

designed to permit charter amendment without incorporating in the charter the compulsory provisions of the general state act.

In the HOME-RULE ACT of 1909, as amended by the VERDIER ACT, these very definite provisions are found:

> Sec. 2. Each city now existing shall continue with all its present rights and powers *except as herein otherwise provided.*
>
> Sec. 3. Each city charter shall provide: (Fifteen compulsory provisions).
>
> Sec. 5. No city shall have power: (Nine definite prohibitions).
>
> Sec. 36. No provision of any city charter shall conflict with or contravene the provisions of any general law of the state.
>
> Sec. 37. All charters heretofore formulated and all proceedings of charter commissions heretofore had under this act are hereby validated and made effectual *so far as the same shall conform to and be within the provisions of this act as amended.*

Plainly, each section quoted demands that every city charter conform to the compulsory provisions of the act. And the plea cannot be made that exemption from this requirement is implied. For in one case cities and villages are excused from the operation of the general act. This is in regard to justices of the peace and constables and the exemption is specifically granted in the act itself.[65] It does not seem reasonable to suppose that, if cities organized prior to 1909 were to be exempted from such important portions of the act as some of those found in sections three and five, this would be done merely by implication, when the grant had been made specifically in a far less important matter.

But it has been suggested that the amendment of a charter or the very passage of the general state act itself includes these provisions *ipso facto* in the city charter. This may be answered briefly, simply by the fact that the things demanded in the sections in question are not all of a nature to be thus included. For instance, each city charter is required to provide, "For the time, manner and means of holding elections and the registration of electors.[66] Such demands are merely general and must be worked out in detail before they can be included in the charter. Furthermore, the Supreme Court has already held in *Attorney General ex rel. Hudson* v. *Com-*

[65] § 28.

[66] Act No. 279, Pub. Acts, 1909, as amended, § 3 (h).

mon Council[67] that "revision must precede amendment" thereby requiring definite action to include those provisions.

Perhaps, though, the general provision should be regarded as thus placed in the charter, the details then being left to be worked out by ordinances passed by the council. And yet even in this case, the general provision cannot be considered as in the charter in the sense that the act demands. If the courts forced the council to perform some of the acts mentioned in section three of the HOME-RULE ACT, it would be because of the provisions of that general act rather than because of anything found in the charter itself. Provisions incompatible with the constitution or general laws of the state may be removed from a city charter automatically but definite action is necessary for the insertion of definite provisions.

The only conclusion that appears possible from this consideration of the facts is that the position of the court in the earlier cases under the HOME-RULE ACT is still correct and that the incorporation of the compulsory provisions of the HOME-RULE ACT should precede any amendment of a charter granted to a city prior to the passage of that act. Any provisions in the charter coming in conflict with the prohibitions of the general state act will be automatically rendered null and void, and such provisions as may be brought into action automatically will also be enforced upon the cities, but merely because of their appearance in general state legislation, rather than in the charter.

As soon as revision or amendment of the charter takes place, all compulsory provisions of the HOME-RULE ACT not hitherto a part of the charter must be included. One of the difficulties of the state act is that it designates no individuals or body of individuals who can be compelled to place these provisions in the city charter. Also there seems to be no way in which to compel a city to undertake such revision or amendment within a given space of time, so if a city is willing to get along without any amendments to its charter it can avoid amending the charter to include the compulsory provisions of the HOME-RULE ACT, though the general state act may subject it to those which can be brought into effect automatically.

It is perfectly clear that if a city, in amending or revising its charter, includes things specifically forbidden by section five of the HOME-RULE ACT, simply that portion of the charter can be declared null and void and the rest be allowed to stand. But what is the result if that amendment omits some of the things in section three requiring detailed provision? In this case it appears that the only thing to do is to throw out the whole charter. Then under what

[67] 164 Mich. 369, (1911). See p. 292, note 51, supra.

would the city operate? The legislature can no longer provide a form of government as it once could. Does the city as a consequence lose its corporate identity? The most reasonable solution is that the city should continue to operate under its old charter, as amended automatically by the HOME-RULE ACT, and that no further amendment of any sort could be effective until all provisions of the HOME-RULE ACT were complied with.

The question of charter revision has already been settled. Complete charter revision is the same as framing a new charter and the provisions of the HOME-RULE ACT must be completely carried out. The only question that remains is that of amendment, which has been considered here. If revision did not include the compulsory provisions of the general state act, it is an undoubted fact that the old state-granted charter would be reverted to until a satisfactory revision was made. The same thing should hold true in the case of amendments, and the old charter be retained, unchanged except as automatically done by the general state statute, and incapable of any other amendment, until the city sees fit to include amendments to reconcile the charter to the general act. The great difficulty of the present act seems to be that it designates no persons or body of persons who can be reached and compelled to do these things which are required. This fact makes necessary the roundabout method of compulsion outlined here. It is true that cities are not being treated in this way at present. But this is very likely due to the fact that such things as are not conformed to in charter amendments are not of the greatest importance. It is very probable that in case a city omitted some matter of great importance from its charter, interest would be aroused and action similar to that outlined above would be brought against the city.

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